

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

1 IN THE MATTER OF)
2 EMERSON G. M. DIESEL, INC.,)
3 Appellant,)
4 vs.)
5 PUGET SOUND AIR POLLUTION)
6 CONTROL AGENCY,)
7 Respondent.)

PCHB No. 473

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

8 THIS MATTER being an appeal of a \$50.00 civil penalty for an alleged
9 smoke emission violation of respondent's Regulation I; having come on
10 regularly for hearing before the Pollution Control Hearings Board on the
11 15th day of February, 1974, at Seattle, Washington; and appellant
12 Emerson G. M. Diesel, Inc. appearing through its general service manager,
13 Robert L. Steele and respondent Puget Sound Air Pollution Control Agency
14 appearing through its attorney, Keith D. McGoffin; and Board members
15 present at the hearing being Walt Woodward (presiding) and Mary Ellen
16 McCaffree; and the Board having considered the sworn testimony, exhibits,
17 records and files herein and arguments of the parties and having entered
18 on the 3rd day of April, 1974, its proposed Findings of Fact, Conclusions

1 of Law and Order, and the Board having served said proposed Findings,
2 Conclusions and Order upon all parties herein by certified mail, return
3 receipt requested and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order and the appellant having paid the civil penalty;
6 and the Board being fully advised in the premises; now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order, dated the 3rd day of
9 April, 1974, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's Final
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 16th day of April, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

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17 Mary Ellen McCaffree
18 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

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Mr. Robert L. Steele
General Service Manager
Emerson G. M. Diesel, Inc.
6851 East Marginal Way South
Seattle, Washington 98108

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai & McGoffin
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

Larene C. Barlin
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
EMERSON G. M. DIESEL, INC.,)
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Appellant,)
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vs.)
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PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 473

FINDINGS OF FACT, CONCLUSIONS AND ORDER

This matter, the appeal of a \$50.00 civil penalty for an alleged smoke emission violation of respondent's Regulation I came before two members of the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Washington Commerce Building, Seattle, Washington, at 9:30 a.m. on February 15, 1974.

Appellant Emerson G. M. Diesel, Inc. was represented by Robert L. Steele, general service manager; respondent Puget Sound Air Pollution Control Agency appeared through its counsel Keith D. McGoffin. Ernest Yamaguchi, Seattle court reporter, recorded the proceedings.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted.
2 Arguments were made.

3 From testimony heard, exhibits examined and arguments considered,
4 the Pollution Control Hearings Board makes these

5 FINDINGS OF FACT

6 I.

7 At about 11:30 a.m. on October 25, 1973 from the northern stack at
8 the rear of appellant's plant at 6851 East Marginal Way South, Seattle,
9 Washington, there was emitted for at least six consecutive minutes black
10 smoke in a 2-3/4 to 3-3/4 opacity on a Ringelmann Chart.

11 II.

12 Section 9.03(a) of respondent's Regulation I makes it unlawful to
13 cause or allow an air contaminant emission for more than three minutes in
14 a shade darker than No. 2 on the Ringelmann Chart.

15 III.

16 An inspector on respondent's staff after observing the above-described
17 emission, issued Notice of Violation No. 8785 to appellant. Subsequently
18 and in connection therewith, appellant was served with Notice of Civil
19 Penalty No. 1240 in the amount of \$50.00, being one-fifth of the maximum
20 amount which respondent may invoke for a violation of its Regulation I.
21 That penalty is the subject of this appeal.

22 IV.

23 Appellant is a distributor for Detroit Diesel Allison Division of
24 General Motors. It is its business to see to it that the Diesel engines
25 do not smoke. When a truck comes in that has an excessive smoke emission
26 problem, the truck engine is tested on a dynamometer to determine the

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 difficulty. Before the test can be made, all the excess fuel must be
2 removed from the engine. It takes from 10 to 15 minutes to dry out an
3 engine. It was this drying out process that caused the black smoke
4 emission on the subject day.

5 V.

6 The motor that was being repaired was an S-series which had in it
7 obsolete injectors which were replaced. The new Detroit Diesel engines
8 all have a new N-series motor which will eliminate the smoking difficulty
9 in the future.

10 VI.

11 Respondent suggested to appellant that an afterburner might be added
12 to the testing equipment which would burn up the excessive smoke during
13 the testing period, keeping it from being emitted into the air.

14 From these Findings the Pollution Control Hearings Board comes
15 to these

16 CONCLUSIONS OF LAW

17 I.

18 Appellant was in violation of respondent's Regulation I as cited
19 in Notice of Violation No. 8785.

20 II.

21 Notice of Civil Penalty No. 1240 is reasonable and lenient, but in
22 view of appellant's good prior record and its efforts to correct the
23 error, further clemency is indicated.

24 Therefore, the Pollution Control Hearings Board issues this

25 ORDER

26 The appeal is denied, but appellant is directed to pay respondent

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 \$25.00, the balance of \$25.00 being suspended on condition that no more
2 similar violations occur for a period of six months from the date this
3 Order becomes final.

4 DATED this 3rd day of April, 1974.

5 POLLUTION CONTROL HEARINGS BOARD

6 Walt Woodward
7 WALT WOODWARD, Chairman

8 Mary Ellen McCaffree
9 MARY ELLEN McCAFFREE, Member

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27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER